Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Petition of Qwest Communications	**)**	
International, Inc. for Forbearance from	**)**	**WC Docket No. 05-333**
Enforcement of the Commission's Dominant	**)**	
Carrier Rules as They Apply After Section	**)**	
272 Sunset Pursuant to 47 U.S.C. § 160	**)**	

OPPOSITION OF COMPTEL

COMPTEL hereby opposes Qwest Communications International, Inc.'s ("Qwest") above captioned petition to be relieved of compliance with the Commission's dominant carrier rules relating to the provision of in-region, interstate interLATA interexchange services ("IXC service") once the separate affiliate requirements of Section 272 of the Communications Act, 47 U.S.C. §272, sunset.[1] Qwest's Petition is procedurally defective because it requests forbearance from regulations that do not apply to its current operations. The petition is defective on the merits because it fails to identify with specificity the rules for which Qwest seeks forbearance or explain how lack of enforcement of those rules meets the Section 10 statutory criteria, 47 U.S.C. § 160. Consistent with its past forbearance decisions, the Commission must summarily deny Qwest's Petition.

[1] Qwest anticipates that Section 272 requirements will sunset in all of its in-region states by December 2006. (Qwest Petition at n. 7).

Preliminary Statement

As Qwest acknowledges, the very issue presented in its Petition – *i.e.*, whether a Bell Operating Company ("BOC") providing in-region, interLATA interexchange service outside of a Section 272 separate affiliate after the sunset of the separate affiliate requirements should be classified as nondominant -- is the same issue being considered by the Commission in the *BOC Classification Rulemaking* proceeding.[2] (Qwest Petition at 3, 13) The matters at issue in the rulemaking have industry wide implications for carriers and consumers alike and should not be decided in a single party forbearance proceeding. In requesting forbearance at this time, Qwest is asking the Commission to prejudge at least some of the issues in the *BOC Classification Rulemaking* on a piece meal basis for its private advantage. A full and detailed record has been developed in the *BOC Classification Rulemaking* on whether Qwest and the other BOCs should be reclassified as non-dominant in the provision in-region IXC service either on an integrated basis or through a non-272 affiliate once the separate affiliate requirements sunset. Although the Commission cannot make a fully informed decision on the issues raised by Qwest's forbearance petition without the benefit of the material submitted in the *BOC Classification Rulemaking* docket, that record is not a part of this proceeding.

Moreover, the Commission may very well issue a decision in the rulemaking proceeding before December 2006, the date that Section 272's requirements sunset in all of the Qwest states. Any such decision may moot Qwest's request for relief, and the

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[2] *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules,* WC Docket No. 02-112, CC Docket No. 00-175, Further Notice of Proposed Rulemaking, FCC 03-111 (released May 19, 2003) ("*BOC Classification Rulemaking"*).

time and resources the Commission devoted to resolving the Petition would have been wasted. Rather than prematurely force a determination as to whether forbearance is warranted regardless of the outcome of the *BOC Classification Rulemaking*, the Commission should deny Qwest's Petition with an invitation to refile, if necessary, once the rulemaking is concluded and Qwest starts offering its in-region IXC services in a manner that would subject it to dominant carrier regulation. As discussed below, the Commission has made very clear that it will not tolerate the use of the statutory Section 10 forbearance process to circumvent the rulemaking process as Qwest is attempting to do here.

The Forbearance Relief Qwest Requests Cannot Be Granted

At the present time, Qwest states that it provides in-region IXC service throughout its 14 state region through two separate affiliates in compliance with Section 272 of the Act.[3] Those separate affiliates are deemed non-dominant in the provision of IXC service under the Commission's rules. (Qwest Petition at 2) Thus, as of the date of its Petition, Qwest is not subject to dominant carrier regulation in the provision of IXC services for which it seeks forbearance. Nonetheless, Qwest has asked the Commission to "forbear from enforcing its Part 61 tariffing and price cap requirements *and any other Commission dominant carrier rules as they might be applied* to Qwest provision of in-region IXC services post-sunset" if and when Qwest elects at some point in the future to provision those services through its ILEC or a non-272 affiliate. (Qwest Petition at 2, emphasis added) Qwest candidly admits that "it cannot say with certainty how it would

[3] Approximately one month after Qwest filed its Petition, Section 272 sunsetted by operation of law for Qwest in the provision of in-region, interLATA telecommunications services in 9 of its 14 states. *Section 272 Sunsets for Qwest Communications International, Inc. in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming by Operation of Law on December 23, 2005 Pursuant to Section 272(f)(1),* WC Docket No. 02-112, DA 05-3313 (released December 23, 2005).

organize its in-region IXC service business" if the dominant carrier rules did not potentially apply post-sunset. (Qwest Petition at 13) Because Qwest's in-region IXC services are not currently subject to dominant carrier regulation and it has made no decision as to how it will offer its services post-sunset, Qwest's request for relief from dominant carrier regulation is premature and incapable of being granted.

The Commission has previously determined that petitions that seek hypothetical forbearance relief, such as Qwest's, are not entitled to consideration under Section 10 of the Act. *In the Matter of Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29, Memorandum Opinion and Order, FCC 05-95 (released May 5, 2005). In the *SBC IP Forbearance* decision, the Commission did an extensive analysis of Section 10 that is particularly relevant and worth repeating at length here, most notably for the Commission's condemnation of the practice of filing forbearance petitions in an attempt to short circuit rulemaking proceedings:

> We conclude that section 10 neither contemplates nor permits grants of forbearance relating to obligations that "may or may not" apply to the telecommunications carrier or telecommunications service at issue. Consequently, that section's provisions do not govern petitions seeking such relief. We find that the word "forbear" in section 10 of the Act means "to desist from; cease." Accordingly, section 10 contemplates that the Commission may forbear from applying pertinent regulations or statutory requirements only to the extent that they apply. In fact, it would be impossible to "forbear from applying [a] regulation or [a] provision of this Act" that does not apply.
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> We acknowledge, and reaffirm here, the importance of forbearance as a critical complement to the other means by which the Commission may remove existing requirements that have been rendered unnecessary by market developments. Nonetheless, an interpretation permitting petitions seeking such relief would regularly require us to prejudge important issues pending in broader rulemakings and otherwise distort the Commission's deliberative process. For example, SBC

itself has argued, in opposition to a petition for forbearance recently withdrawn by Level 3, that by trying to force Commission action within the statutory deadlines of Section 10, Level 3 sought to 'jump out ahead of the Commission on intercarrier compensation reform by obtaining a quick, self-serving fix on one intercarrier compensation issue without the slightest regard for how such piecemeal relief would complicate resolution of all the other issues to which this one issue is inextricably tied." We agree with SBC that forbearance petitions seeking this kind of relief are likely to disrupt the course of the Commission's decisionmaking process by placing certain aspects of complex and comprehensive regulatory problems, but not others, on especially demanding, statutorily prescribed "one year . . .[plus] 90 day[]" schedules. . . . While the Commission might sometimes choose to grant the relief sought by parties in the form of interim rules, permanent rules, or declarations regarding existing law, a framework permitting parties to compel a forbearance decision within the period set out in section 10(c) would unduly cabin the Commission's discretion in considering both whether and when to modify discrete aspects of the regulatory regime and could well stymie comprehensive reform. We do not believe that Congress, in framing section 10, could have intended this result, given the absence of specific deadlines for rulemaking proceedings in the statute.

* * *

We also believe that granting forbearance petitions "to the extent" that particular regulations might otherwise apply would create serious administrability concerns and would threaten the Commission's ability to determine its own priorities and set its own agenda. If we interpret section 10 to permit [such] forbearance petitions . . ., the result could be the filing of multiple petitions relating to the same topic, all with different statutory deadlines. This result would complicate and hinder the Commission's decisionmaking process enormously, as we would be forced to delay ongoing rulemaking efforts in order to address one forbearance petition after another.

In addition . . . such a framework would likely lead to petitions posing hypothetical questions regarding real or imagined services. Each of these petitions would necessitate resolution within the "one year . . .[plus] 90 day[]" period described in section 10(c) and would automatically be deemed granted after that period in the absence of a Commission order evaluating the merits of forbearance from the relevant (but hypothetical) obligation or obligations. This approach would greatly and unnecessarily strain the Commission's resources, which would be diverted from actual regulatory controversies of concrete consequence to theoretical disputes with disparate deadlines for resolution. We do not believe that Congress intended this result.

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> The statutory purposes animating the 1996 Act generally, and section 10 in particular, support an interpretation barring grants of forbearance from obligations that may or may not otherwise apply. . . . A legal framework that allowed grants of forbearance "to the extent" that a particular regulation *might* apply would invite forbearance requests seeking to ensure that a wide range of actual and hypothetical services be rendered immune from the entire panoply of regulatory requirements that might apply to such services. . . . We do not believe that such a regime, which would increase rather than decrease the Commission's scrutiny of new and developing services and markets, is consistent with the purposes of section 10 or the 1996 Act.

Id. At ¶¶ 5, 9, 10, 11, 12.

Qwest's Petition fits squarely within the Commission's definition of forbearance petitions that will not be entertained under Section 10. Dominant carrier regulation does not apply to Qwest's current offering of in-region IXC service and will not apply to any such offerings unless Qwest changes the way it does business after Section 272 sunsets. As noted above, Qwest apparently has no concrete plans to change the way it offers in-region IXC service after Section 272 sunsets. (Qwest Petition at 13) Until and unless dominant carrier regulation actually applies to Qwest's provision of in-region IXC service, expecting the Commission to evaluate the merits of Qwest's request for forbearance would unnecessarily strain the Commission's resources and divert attention away from actual controversies of concrete consequence. As the Commission concluded, it is impossible to forbear from a applying a regulation that does not apply and Section 10 will not be used to resolve hypothetical situations.

Qwest urges the Commission to use forbearance to eliminate dominant carrier regulation of in-region IXC services offered by a non-Section 272 compliant BOC affiliate on the grounds that competition in the local exchange and long distance markets has rendered such regulation unnecessary. The same issue is before the Commission in the *BOC Classification Rulemaking* proceeding. Relying on Section 10's statutory

deadlines, Qwest is attempting to force the Commission to act on its Petition before the Commission has decided whether and when to modify or eliminate the dominant carrier regulations currently applicable to non-Section 272 BOC affiliates. Entertaining Qwest's request would require the Commission to prejudge the important issues pending in the broader rulemaking proceeding, distort the Commission's deliberative process, disrupt the course of the Commission's decision making process, delay action in the rulemaking case and unduly curtail the exercise of the Commission's discretion in setting its agenda and priorities. COMPTEL fully endorses the Commission's view that Congress did not intend for Section 10 to be used in this manner. The Commission should deny Qwest's Petition on the grounds set forth in the *SBC IP Forbearance* decision.

Qwest Has Not Shown That It Is Entitled To Relief

In the event the Commission decides to move forward on Qwest's Petition, despite the pending rulemaking and despite its inability to forbear from applying dominant carrier regulations that do not apply to Qwest's in-region IXC service, it must deny the Petition on the merits. Section 10(a) of the Act provides that, prior to granting a telecommunications carrier forbearance from any provision of the Commission rules, the Commission must determine that (1) enforcement of the provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision is consistent with the public interest. All three conjunctive prongs of Section 10(a) must be satisfied before the Commission is obligated to forbear

from enforcing a regulation. The Qwest Petition does not contain sufficient information upon which the Commission could determine that forbearance is warranted.

The Petition's lack of specificity makes it impossible to conclude that the forbearance requested satisfies the requirements of Section 10. First, Qwest has failed to identify with particularity any dominant carrier regulations other than the Part 61 tariffing and price cap regulations for which it seeks forbearance. Qwest's broad catchall request that the Commission forbear from enforcing "any other dominant carrier rules as they might be applied" is too imprecise to be taken seriously. In considering earlier forbearance petitions filed by Qwest and other carriers, the Commission has made clear that it will deny forbearance petitions that, like Qwest's petition, fail "to identify specific regulations or to explain how they meet the section 10 criteria." *See In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160 in the Omaha Metropolitan Statistical Area,* WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170 at ¶16 and n. 51 (released December 2, 2005)(" *Qwest Omaha Forbearance Petition")* (the Commission is not required "to comb though its rules to infer which other regulations are encompassed by Qwest's general request [and] this lack of specificity alone warrants dismissal" of the general request to be relieved of dominant carrier regulation); *In the Matter of Petition of SBC Communications, Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29, Memorandum Opinion and Order, FCC 05-95 at ¶ 13 (released May 5, 2005) (petitions that "seek forbearance of regulatory requirements to whatever extent those requirements might otherwise apply" are procedurally improper and need not be evaluated under the Section 10 framework).

Second, even Qwest's request for forbearance from the tariffing and price cap rules is insufficiently detailed to warrant consideration. Qwest makes a single, cursory mention of price cap requirements on page 2 of the Petition. While it generally complains about the hassle of filing tariffs (*see, e.g.,* Petition at 15), Qwest makes no effort to show specifically that enforcement of any or all of the Part 61 tariff rules or price cap regulations is (1) not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with Qwest or its in-region IXC services are just and reasonable and are not unjustly or unreasonably discriminatory; (2) is not necessary for the protection of consumers; and (3) and that forbearance from applying the provisions would be consistent with the public interest. Instead, its entire discussion of the three prong statutory criteria of Section 10(a) consists of conclusory allegations that forbearance is warranted for "dominant carrier regulation." (Qwest Petition at 15-18) As the Commission has previously held, Qwest's failure to explain how any specific dominant carrier regulation meets the section 10 criteria is fatal to its request for forbearance relief. *Qwest Omaha Forbearance Petition* at ¶ 16.

Conclusion

For the foregoing reasons, COMPTEL respectfully requests that the Commission deny Qwest's Petition for Forbearance.

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Respectfully submitted,

/s/
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